IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 174 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SIYARAM BATTIRAM RABDAS (CHAMAR) - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,MR BS SUPEHIA for Appellant(s) : 1,
MR KT DAVE, Additional Public Prosecutor for

Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 06/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K. A. PUJ)

1. This appeal is filed by the appellant – original accused through jail, who was convicted under Section-8(c) read with Section-20(b)(ii) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as 'the Act' and was ordered to suffer R.I for a period of 10 years and fine of Rs.1 lac and default thereof to undergo further S.I of six months.

2. The case of the prosecution as revealed in the complaint and as unfolded during the course of trial is briefly stated as under :-

3. The appellant - accused who was proceeding on 2.7.1999 at 4:30 in the afternoon in the auto-rickshaw alongwith other two persons on the Nathalal Zagda Bridge situated near Maninagar was caught red handed with the bag containing 5 kg 7 gms and 8 ml.gms 'charas' without pass or permit or license and thereby he has committed an offence punishable under Section-8(c) read with Section-20(b)(ii) of the NDPS Act.

4. It is the case of the prosecution that on 2.7.1999 P.W. No.3 - Mr.A.C.Patel, who was Senior Police Inspector in the Maninagar Police Station was standing near Zagda bridge for checking the vehicles, the accused was travelling in the auto rickshaw which was intercepted by the raiding party and on checking the bag which was in his possession, the contraband articles 'charas' were recovered from him. The appellant – accused

was asked as to whether he wanted to have the search to be carried out in the presence of Gazetted Officer or Magistrate and when he replied in the negative the search of his person was carried out. The officer of FSL was called to ascertain as to whether the contraband article was 'charas' which was recovered from the appellant - accused. After weighing the muddamal, the same was sent to FSL for detailed analysis. On weighing the muddamal, the same was found to the tune of 5 kg. 37 gms. And 400 ml.gms. The bush-shirt, pent and underwear which was found from the bag of the accused was recovered in the presence of panch witnesses and the panchnama to that effect was prepared. The other two persons who accompanied the accused, ran away from the Zagda bridge and inspite of the efforts made by the raiding party they could not be traced. Necessary entry was made in the station diary maintained at Maninagar Police

Station on 2.7.1999. The complaint was given by Mr.A.C.Patel – Senior Police Inspector on 2.7.1999 before the Maninagar Police Station. Thereafter, the offence was registered against the accused being Prohibition Case No.5100 of 1999 in the Maninagar Police Station. The report was prepared under Section-157 of the Criminal Procedure Code and the same was forwarded to the higher officer for necessary action.

5. Pursuant to the registration of the offence, the investigation was put into motion. During the course of investigation, statements of the witnesses were recorded, panchnama of scene of offence was prepared, muddamal articles were recovered by drawing panchnama which were sent to F.S.L. for chemical analysis. After obtaining F.S.L. Report, since sufficient incriminating evidence was found against the accused, he was charge-sheeted in the Court of learned

City Civil & Sessions Judge, Ahmedabad who framed charge against the accused for commission of the offence punishable under Section-8(c) and 20 (b) (ii) of the Act.

6. The charge was read over and explained to the accused. As the accused has not pleaded guilty to the said charge, he was put to trial and tried by the learned City Civil &Sessions Judge, Ahmedabad in Sessions Case No.235 of 1999.

7. To prove the culpability of the accused, prosecution has in all examined as many as 9 witnesses, the details of which are as under:-

Sr.No.	Particulars	Exh.No.
1	P.W No.1 – Dulerai Girish Nagarbhai	08
2	P.W No.2 – Andarsing J. Patel	10
3	P.W No.3 – Ambalal Chhotabhai Patel	12
4	P.W No.4 – Nanabhai Khumabhai Parmar	23
5	P.W No.5 - Dhirendra Ramabhai	26

Sr.No.	Particulars	Exh.No.
6	P.W No.6 – Dharmendra Gulabrai Motiramani	27
7	P.W No.7 – Abdulrmajid Hasanmiya Malek	28
8	P.W No.8 – Kesharsing Nansing Parmar	30
9	P.W No.9 – Baldevdhan Ramdhan Khokhar	32

8. Prosecution has also produced several documents and relied upon the contents of the same, details of which are as under :-

Sr.No.	Particulars	Exh.No.
1	Complaint filed by Mr.A.C.Patel on 2.7.1999	13
2	Report prepared under Section-157 of Cr.P.C.	14
3	Panchnama of the place of incident	9
4	Report prepared with regard to the option which was offered to the accused	15
5	Copy of the seizure memo	16
6	Copy of the arrest memo	17
7	Copy of the letter written to the higher officer	18
8	Copy of the TP message	19
9	Copy of note prepared for sending muddamal to the FSL, receipt given by FSL and report of the FSL.	20, 21, 22, 32 and 33

Sr.No.	Particulars	Exh.No.
10	Details of muddamal articles recovered and the entries made in the register.	25
11	Entries made in the station diary	24
12	Noting of muddamal in the register.	11

10. After recording of the evidence of the prosecution witnesses was over, the learned Sessions Judge, Ahmedabad explained the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement, as required under Section 313 of the Code. In his further statement, the accused denied the case of the prosecution by reiterating that he has been falsely implicated.

11. On appreciation, evaluation, analysis and close scrutiny of the evidence adduced by the prosecution, the learned Sessions Judge, Ahmedabad has held that the prosecution has established beyond reasonable doubt that the charge levelled against the accused was

proved and, therefore, the accused was held guilty of the offence punishable under Section-8(c) and 20 (b) (ii) of the Act. The learned Sessions Judge, Ahmedabad has, however, heard the accused and his advocate on sentence and looking to the gravity of the offence committed by the accused and looking to the circumstances, the appellant – accused was sentenced to suffer rigorous imprisonment of 10 years and fine of Rs. 1 Lac and in default thereof, to undergo simple imprisonment of six months for the offence punishable under Section-8(c) and 20 (b) (ii) of the Act.

12. Mr.B.S.Supehia, learned advocate appearing for the appellant – original accused has taken us through the oral as well as documentary evidence which are on record and also assailed the judgment and order of the learned Sessions Judge, Ahmedabad dated

28.4.2000. He has submitted that the learned Sessions Judge has erred in convicting the appellant though there was no cogent or adequate evidence showing his guilt in the matter. He has further submitted that the learned Sessions Judge, Ahmedabad has failed to appreciate that the appellant is innocent and has not committed the alleged offence. He has further submitted that the statutory compliance required under the Act have not been fulfilled by the prosecution. The sealing procedure was not properly followed by the raiding party and there were numerous discrepancies and contradictions in the depositions of the panch witnesses as well as police witnesses. He has further submitted that the conscious possession of the muddamal by the appellant – accused was not proved by the prosecution during the course of trial. Mr.Supehia has further submitted that if the depositions and the documentary evidence are perused it becomes clear that the accused was

travelling alongwith the other two persons in the auto-rickshaw and When the auto-rickshaw was intercepted and accused was detained for interrogation by the raiding party he was found in possession of the bag, but whether he was in actual possession of the bag or not has not been proved by the prosecution by adducing cogent, convincing and conclusive evidence. The other two persons who accompanied the accused could as well be as per the submission of Mr.Supehia, the owner of the bag from where the contraband article, namely, charas was recovered. Since the possession of the bag has not been proved by the prosecution by adducing cogent evidence, the accused could not have been convicted for the offence under Section-8(c) read with Section-20(b)(ii) of the Act. Mr.Supehia further submitted that the other two persons who accompanied appellant – accused could not have been detained by the raiding party and, therefore, the true story about the real

ownership of the bag could not be brought to light by the Investigating Agency. The number of the auto rickshaw in which the accused was travelling was not known by any one who were members of raiding party. He has further submitted that when the ownership of the bag is not proved by the prosecution then in such circumstances the benefit of doubt is required to be given to the appellant – accused. He has further submitted that the provisions contained in the NDPS Act are very stringent and, therefore, it is incumbent upon the prosecution to prove the case against the appellant – accused beyond all reasonable doubt.

13. Mr. K.T. Dave, learned Additional Public Prosecutor appearing for State of Gujarat, on the other hand, supported the order and judgment of the learned Sessions Judge and

submitted that there was no violation of any statutory provision and all necessary compliances were made by the raiding parties and/or investigating agency and there was no substance in the argument that the provisions contained in the Act were violated. He has further submitted that the prosecution has on the basis of documentary evidence and oral depositions proved the entire link of connecting the accused with the commission of the offence. Lastly, he has submitted that since the raiding party and/or investigating agency has proved the case against the appellant – accused beyond all reasonable doubt, the learned Sessions Judge has rightly convicted the appellant – accused and no interference is called for by this Court while exercising its appellate jurisdiction under Section-374 of the Criminal Procedure Code.

14. We have considered the submissions advanced by learned advocates appearing for the respective parties at length. We have also undertaken a complete and comprehensive exercise of appreciating all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. We have also gone through the entire testimonial collections. We have applied our mind to the impugned judgment and order passed by the learned Sessions Judge, Ahmedabad convicting the appellant.

15. At the outset, it is required to be noted that to combat illicit drug traffic and drug abuse, both at the national and international levels, the penal provisions contained under the NDPS Act are stringent and punishment thereunder is harsh, therefore, as per the settled principles of criminal jurisprudence,

the Court of law must insist on the strict compliance of the safeguards provided under the statutory provisions contained thereunder. We have to therefore find out as to whether in the instant case strict compliance of the safeguards provided under the statutory provisions have been followed by the Investigating Agency during the course of search of the accused and seizure of the muddamal contraband article 'charas'.

16. In this connection, we shall refer to the testimony of P.W. No.1 – Dulerai Girish Nagarbhai. He is the panch witness. He is examined at Ex.8. He has deposed in his testimony that when he was proceeding on the Zagda bridge situated near Maninagar before 8 months from the date of the deposition, he saw the crowd gathered near the bridge and he was asked to work as a panch witness. Thereafter, on opening the bag which was

seized from the accused, ten packets of contraband articles were found. Thereafter the officer from FSL was called. The muddamal was weighed in the presence of the officer. After collecting the sample, the same was sealed in his presence and the panchnama to that effect was prepared.

17. P.W. No.2 – Andarsing Jaysing Patel, is examined at Ex.10. He has deposed in his testimony that the Prohibition Case bearing No.5100 of 1999 was recorded on 2.7.1999 at Maninagar Police Station. The muddamal was handed over by PSO on the same day and thereafter he kept the muddamal in the lock-up room. The entry to that effect was made in the register. The muddamal which was recovered for sending the same to FSL was handed over to head constable Kesharsing Nanusing on 3.7.1999.

18. P.W. No.3 – Ambalal Chhotabhai Patel is examined at Ex.12. He has deposed in his testimony that on 2.7.1999 he was working as a Senior Police Inspector in the Maninagar Police Station and when he was standing near the Zagda bridge situated near Maninagar for checking of the vehicles, the accused who was travelling in the auto rickshaw was intercepted by the raiding party and on checking the bag which was in his possession, the contraband articles 'charas' was recovered from him. He was told as to whether he wanted to have the search to be carried out in the presence of Gazetted Officer or Magistrate and when he replied in the negative the search of his person was carried out. The officer of FSL was called to ascertain as to whether the contraband article was 'charas' which was recovered from the accused. After weighing the muddamal, it was sealed and the same was sent to FSL for detail analysis. On weighing the muddamal

the same found to the tune of 5 kg, 37 gms and 400 ml.gms.

19. P.W. No.4 – Nanabhai Khumabhai Parmar is examined at Ex.23. He was working as PSO at Maninagar Police Station. He was the person, who has made necessary entry in the station diary maintained at Maninagar Police Station on 2.7.1999.

20. P.W. No.5 – Dhirendra Rambhai is examined at Ex.26. He has deposed in his testimony that on 2.7.1999 he was working as Police Constable in Maninagar Police Station. He was told to remain present at the Zagda bridge situated near Maninagar for the purpose of checking the vehicles. When he was standing near the Zagda bridge one auto rickshaw was intercepted by the raiding party and one person having the bag in his possession was questioned and on opening the

bag the contraband article was recovered from his possession. Thereafter, the officer of the FSL was called on the spot and the muddamal article which was seized was sent to FSL for the purpose of detailed analysis.

21. P.W. No.6 – Dharmendra Gulabrai is examined at Ex.27. He is the person who had weighed the muddamal in the presence of panch witnesses and he has deposed in his testimony that the total weight of 'charas' was approximately 5 kg.

22. P.W.No.7 – Abdulmajid Hasanmiya Malek is examined at Ex.28. He has deposited in his testimony as to how the raid was carried out and how the accused who was having contraband article in his bag was caught red handed.

23. P.W. No.8 – Kesharsing Nansing Parmar is

examined at Ex.30. He is the person who took the muddamal article to FSL for the purpose of detail analysis. P.W. No.9 – Baldevdhan Khokhar is examined at Ex.32. He made inquiry from the accused as to how he brought the contraband article 'charas' and the source from where he brought the contraband article.

24. It is required to be noted that all these 9 witnesses i.e. P.W. Nos.1 to 9 have successfully withstood the test of cross-examination. Nothing substantial has been brought out from their evidence which would impeach their credibility. They have in unequivocal terms testified before the court as to what role they have played in the raid. They have also testified about the necessary and mandatory compliance of the provisions of sections 42, 50, 52 and 57 of the NDPS Act.

25. The prosecution has also produced the documentary evidence in order to indicate the involvement of the accused in the commission of the offence. The learned Sessions Judge has discussed the contents of these documents and indicated as to how those documents were pressed into service by the prosecution for establishment of the offence committed by the accused. These documents also indicated about the due compliance of the statutory provisions by the prosecution. Compliance of Sections-42 and 50 was duly made by the prosecution. There was no defect in the sealing procedure. The contraband articles were sent in time to FSL and the report submitted by the FSL has undoubtedly proved that the contraband article was 'charas'. It is true that other two persons, who were travelling with the appellant – accused in auto-rickshaw and the auto-rickshaw itself were not caught hold by the raiding party, but this fact itself would not absolve the

appellant – accused from the charge of offence levelled against him and on the basis of the documentary evidence it was proved beyond any reasonable doubt that the accused was involved in the commission of the offence under Section-8(c) read with Section-20(b)(ii) of the Act. The appellant – accused has miserably failed to prove to the satisfaction of the raiding party as well as Sessions Court and even to this Court, the fact as to how he came in possession of the contraband article 'charas'. In this view of the matter, this Court is of the opinion that the prosecution has proved the involvement of the accused in the commission of the offence and the appellant - accused is rightly held guilty for an offence under Section-8(c) read with Section-20(b)(ii) of the NDPS Act.

26. In view of the evidence collected by the raiding party as well as Investigating Agency and correctly appreciated by the learned

Sessions Judge and on due perusal of further appreciation of this evidence by the Court, there is no manner of doubt that when the accused was intercepted, apprehended and searched, he was found in possession of contraband article, namely, 'charas'. Necessary formalities of search and seizure were complied with in presence of panchas and the statutory requirements and formalities contained under the NDPS Act were followed and the samples were sent to FSL after following the procedures under the NDPS Act.

27. On close scrutiny of the evidence on record, we find no infirmities in the findings, ultimate conclusion and the resultant order of conviction and sentence recorded by the trial court. We are in complete agreement with the said findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial court, as according to us, no other

conclusion is possible except the one reached by the trial court in the facts and circumstances of the case.

28. No new argument is advanced. No new criticism is offered. No infirmity in the reasoning of the trial court is pointed out. The evidence has been carefully analyzed and fully appreciated in the closely reasoned judgment with which we fully concur. We do not think it right to assign any more reason or to add to something more while confirming the order and judgment of the learned Sessions Judge.

29. In aforesaid view of the matter, there is no reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence. The sentence awarded to the accused is minimum and has to be maintained.

30. On the wake up of the aforesaid, we are not inclined to interfere with the judgment and order of conviction and sentence recorded by the trial court and as the appeal lacks merit, deserves to be dismissed.

31. For the foregoing reasons, the appeal fails and accordingly it is dismissed.

(A. M. KAPADIA, J.)

(K. A. PUJ, J.)

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